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**Community Support Network and Service Employees
International Union Local 1021.** Case 20–CA–
143287

January 5, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by Service Employees International Union Local 1021 (the Union) on December 16, 2014, the General Counsel issued the complaint on December 30, 2014, alleging that Community Support Network (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 20–RD–117284. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On February 6, 2015, the General Counsel filed a Motion for Summary Judgment. On February 9, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response and a cross-motion for summary judgment, and the General Counsel filed an opposition to the Respondent's cross-motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but contests the validity of the certification on the basis of its affirmative defense that it withdrew recognition from the Union on the basis of a petition signed by a majority of unit employees. The Respondent received the petition on October 3, 2014, after the Regional Director issued a tally of ballots on August 29, 2014, but before the Regional Director issued his Report on Employer's Objection on October 31, 2014, and the Board issued the certification of representative on November 21, 2014. The Respondent argues that because the Union was not certified at the time the Respondent received the petition, it

did not act unlawfully when withdrew recognition from the Union on October 3, 2014, and subsequently refused to recognize and bargain with the Union on December 4, 2014.

It is well settled that an alleged postelection loss of majority support is not relevant to the question of whether a union should be certified as the result of a properly conducted Board election. See *Brooks v. NLRB*, 348 U.S. 96, 104 (1954); *Macy's Inc.*, 361 NLRB No. 163, slip op. at 1 (2015); *San Miguel Hospital Corp. d/b/a Alta Vista Regional Hospital*, 356 NLRB No. 167, slip op. at 3 (2011), *enfd.* 697 F.3d 1181, 1187 (D.C. Cir. 2012) ("post-election assertion that a union has lost majority support has no bearing on the validity of an election that has already occurred"). In any event, the Respondent is procedurally barred from raising this issue here, since it had the opportunity to raise this argument, but did not, in the underlying representation proceeding, either directly or through a motion to reopen the record.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with an office and place of business at 1410 Guerneville Road, Santa Rosa, California, has been engaged in the business of assisting and housing disabled adults.

During the calendar year ending December 31, 2013, the Respondent derived gross revenues in excess of \$250,000, and purchased and received goods valued in excess of \$5000 which originated directly from points located outside the State of California.

¹ See *Macy's*, *supra*, slip op. at 1 and fn. 4, citing Sec. 102.65(e)(1) of the Board's Rules and Regulations (motion to reopen the record must be filed promptly upon discovery of the evidence sought to be adduced).

² Therefore, we deny the Respondent's cross-motion for summary judgment.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the decertification election conducted from August 13 to August 27, 2014, the Union was certified on November 21, 2014, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time residential counselors, relief residential counselors, lead residential counselors, rehabilitation support staff counselors, case managers, clerical staff [except those located in the administration office] and maintenance personnel located at the Agency's facilities in Sonoma County, California.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

By letter dated December 2, 2014, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit. By letter dated December 4, 2014, the Respondent refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. We find that this conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 4, 2014, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to

bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Community Support Network, Santa Rosa, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Service Employees International Union Local 1021, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time residential counselors, relief residential counselors, lead residential counselors, rehabilitation support staff counselors, case managers, clerical staff [except those located in the administration office] and maintenance personnel located at the Agency's facilities in Sonoma County, California.

(b) Within 14 days after service by the Region, post at its facilities in Sonoma County, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 4, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 5, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Service Employees International Union Local 1021 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time residential counselors, relief residential counselors, lead residential counselors, rehabilitation support staff counselors, case managers, clerical staff [except those located in the administration office] and maintenance personnel located at the Agency's facilities in Sonoma County, California.

COMMUNITY SUPPORT NETWORK

The Board's decision can be found at www.nlr.gov/case/20-CA-143287 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

